3 **Telephone:** (602) 248-8203 Facsimile: (602) 248-8840 E-Mail Address: cji@hsjlaw.com 4 5 Carolyn J. Johnsen - 011894 **Attorneys for Debtor** 6 7 8 IN THE UNITED STATES BANKRUPTCY COURT 9 FOR THE DISTRICT OF ARIZONA 10 In re: Chapter 11 Proceedings 11 LEEWARD HOTELS, L.P., an Arizona Case No. 99-09162-ECF-GBN 12 limited partnership, OBJECTION TO PROOFS OF CLAIM FILED 13 Debtor. **BY LENNAR** 14 Debtor files this objection to the proofs of claim filed by LaSalle National Bank, in its capacity as 15 Trustee for the registered holders of DLJ Mortgage Acceptance Corporation, Commercial Mortgage Passthrough 16 Certificates, Series 1997-CF1, by and through its Servicer, Lennar Partners, Inc. ("Lennar"). 17 Lennar has filed twenty separate proofs of claim ("POC"). Each of 10 of the POC 18 represents Lennar's first lien claim with respect to an individual Hotel; each of 10 of the POC represents Lennar's 19 second lien claim with respect to an individual Hotel. The POC each identify principal, interest, fees, costs and 20 real property taxes. The second lien claims for each of the Hotels are identical in amount. A sample of a first lien 21 22 POC and second lien POC are attached to this objection. The objection is based on the following: 23 1. **Improper Components** 24 On each of the POC, Lennar has identified "escrow payments" due as of August 1, 1999. These 25 amounts are included as part of the overall debt and should not be added to the debt. In addition, Lennar has 26 claimed "senior unpaid real property taxes" which are not a part of the debt. These taxes are paid separately in 27 either the Debtor's or Lennar's plan. 28

HEBERT, SCHENK & JOHNSEN, P.C.

1440 E. Missouri Avenue Missouri Commons Suite 125

Phoenix, Arizona 85014-2459

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2. Calculation of Debt Based on 11 U.S.C. §506

The amount of Lennar's allowed secured claim with respect to each of the Hotels will be determined based on the value of Lennar's collateral. To the extent necessary, Debtor objects to the POC which exceed the value of the collateral and to the inclusion of post-petition interest, fees, costs and other charges.

3. **Prepayment Penalty**

Lennar has claimed a prepayment charge should be applied if the indebtedness is paid prior to maturity. A prepayment charge is not allowable in that 1) for the Hotels which are being retained by the Debtor the indebtedness is not being "pre-paid"; 2) for the Hotels which are being abandoned by the Debtor, the value of the collateral is less than the amount of the debt; 3) the so-called prepayment charge is actually a penalty and is unenforceable and in any event is unreasonable.

Based on the foregoing, Debtor requests that the Court establish the allowed secured claims of Lennar based on the value of the collateral and eliminate the improper charges.

DATED this 7th day of April, 2000.

HEBERT, SCHENK & JOHNSEN, P.C.

By /s/ Carolyn J. Johnsen #011894 Carolyn J. Johnsen 1440 East Missouri Avenue Missouri Commons Suite 125 Phoenix, Arizona 85014-2459 Attorneys for Debtor

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COPY of the foregoing mailed or served via (fax*/ electronic notification**

23 or hand-delivery if marked ***) this 7th day of April, 2000, to:

24

Office of the U.S. Trustee P.O. Box 36170

25 26

Phoenix, AZ 85067-6170

27

Michel W. Carmel, LTD. 80 East Columbus Avenue

28

Phoenix, Arizona 85012-2334 Counsel for Kilburg Management, Kilburg Employment; Kilburg Hotels

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1	Missouri Department of Revenue
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26	
27	
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4	Williamson County RFM County of Taylor, City of Abilene
5	Abilene Independent School District
6	Brian W. Hendrickson, Esq. HENDRICKSON & ASSOCIATES
7	4411 S. Rural Road, Suite 201 Tempe, Arizona 85282 Counsel for City of Lubbock, Texas
8	
9	Patrick H. Tyler Assistant Attorney General Bankruptcy & Collections Division
10	P.O. Box 12548 Austin, Texas 78711-2548
11	Counsel for Comptroller of Public Accounts
12	for the State of Texas
13	Bret M. Maidman LEWIS AND ROCA LLP
14	40 North Central Avenue, Suite 1900 Phoenix, Arizona 85004-4429
15	Counsel for ACP Mortgage
16	Thomas W. Choate
17	Attorney at Law P.O. Box 206
18	Abilene, Texas 79604 Counsel for Expo Center of
19	Taylor County
20	/s/ Jolynn Marquardt F:\Data\KILBURG.B\9903401\obj-poc.wpd
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Name of Debtor Leeward Hotels, L.P., an Arizona limited partnership NOTE: this form is acid 1603-280-24 to make a familite that partnership NOTE: this form is acid 1603-280-24 to make a familite that partnership Note: The present of the person or other entity to whom the debtor over money or property): LASALLE NATIONAL BANK, in its capacity as Trustee for the registered holders of DLJ Mortgage Acceptance Corporation, Commercial Mortgage Paststrough Certificates, Series 1974-CFI, by and through its Servicer, Lennar Partners, Inc. (the "Secured Lender") Name and address where notices should be sent: Servicer, Lennar Partners, Inc. (the "Secured Lender") Name and address where notices should be sent: Whomas Salerno, Esq. Two Renaissance Square 40 N. Central Avenue, Suite 2700 Phoenia, Arizona 85004-4498 Telephone number: (602) 528-4000 Account or other number by which creditor identifies debtor: See Attachment A 1. Basis for Claim: Goods sold Services performed Money loaned Personal injury/wrongful death Taxes Other 2. Date debt was incurred: March 3, 1997 4. Total Amount of Claim at Time Case Filed: March 3, 1997 4. Total Amount of Claim at Time Case Filed: Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges. Secured Claim: Check this box if your claim is secured by collateral (including a right of sectoff). Brief description of Collateral: Real Estate Motor Vehicle Other Hotel property See Attachment A Amount entitled to priority: 5 Specify the priority of the claim: Wages, salaries, or commissions (up to \$4,300), eamed within 90 days befobats, psycy petition or cessation of the debtor's business, whichever is early \$5,507(a,50).					
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Name of Creditor (The person or other entity to whom the debtor owes money or property): LASALLE NATIONAL BANK, in its capacity as Trustee for the registered holders of DLJ Mortgage Acceptance Corporation, Commercial Mortgage Pastirough Certificates, Series 1997-CFI, by and through its Servicer, Lennar Partners, Inc. (the "Secured Lender") Name and address where notices should be sent: Squire, Sanders & Dempsey L.L.P. Other March Advenue, Suite 2700 Phoenis, Arizona 85004-4498 Account or other number by which creditor identifies debtor: See Attachment A 1. Basis for Claim: Goods sold Services performed Money loaned Personal injury/wrongful death Taxes Other Other 2. Date debt was incurred: March 3, 1997 4. Total Amount of Claim at Time Case Filed: Check his box if claim includes interest or other charges in addition to the principal amount of the claim. Attach interest or additional charges. See Claim. Check this box if you have never received any notices from the bankruptey court in this case. Check box if you have never received any notices from the bankruptey court in this case. Check box if you have never received any notices from the bankruptey court in this case. Check box if you have never received any notices from the bankruptey court in this case. Check hos this address of differs from the address on the envelope sent to you by the court. Check his box if claim replaces or amends a previously filed claim, dated: 1. Basis for Claim: Goods sold Services performed Money loaned Personal injury/wrongful death Taxes Other Other 3. If court judgment, date obtained: 6. Unsecured Priority Claim. Check his box if you relaim is secured by collateral (including a right of setoff). Brief description of Collateral: Real Estate Motor Vehicle Other Hotel property				ard Hotels, L.P., an Arizona limited partnership	Leew
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	e filing of er – 11 U.S	\$4,300), earned within 90 days before fill	Specify the priority of the claim: Wages, salaries, or commissions (up to bankruptcy petition or cessation of the	Motor Vehicle	Brief description of Real Estate
Value of Collateral: \$ currently unknown Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4)		lan – 11 U.S.C. § 507(a)(4)	Contributions to an employee benefit p	al: \$ currently unknown	Value of Collatera
Up to \$1,950 of deposits toward purchase, lease, or rental of property of personal, family, or household use - 11 U.S.C. § 507(a)(6)		U.S.C. § 507(a)(6)	personal, family, or household use - 11		. 2.22 0. 20
Alimony, maintenance, or support owed to a spouse, former spouse, or chi § 507(a)(7) Amount of arrearage and other charges at time case filed included in secured claim above, if any: \$ See Attachment A Secured claim above, and a Secured claim above, and a Secured claim above, and a Secured claim above a Secured claim above.		tal units - 11 U.S.C. § 507(a)(8) of 11 U.S.C. § 507(a)(8)	§ 507(a)(7) Taxes or penalties owed to governmen Other – Specify applicable paragraph o	,	in
cases commenced on or after the date of adjustment.		istment.	cases commenced on or after the date of adju		
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statement of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. 9. Date-Stamped Copy: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. Date: Sign and print the name and title, if any, of the creditor or other person authorized to file this	ONLY	THIS SPACE IS FOR COURT USE ON	promissory notes, purchase orders, s, mortgages, security agreements, able, explain. If the documents are or claim, enclose a stamped, self	uments: Attach copies of supporting documents, such as statement of running accounts, contracts, court judgment rection of lien. PRIGINAL DOCUMENTS. If the documents are not avail a summary. Copy: To receive an acknowledgement of the filing of yound copy of this proof of claim. Sign and print the name and title, if any, of the creditor of	this proof of claim. 8. Supporting Doc invoices, itemized and evidence of pe DO NOT SEND O voluminous, attach 9. Date-Stamped C-addressed envelope a
claim (attach power of attorney, if any)				XIII	January 3, 2000
Attorneys for the Secured Lender				ting fraudulent claim: Fine up to \$50,000 or impris	

ATTACHMENT A

Borrower Name: Round Rock Hotel, L.P.

Account Number: 00-9791562 / 961093870

Principal Balance as of August 1, 1999:	\$ 2	,320,074.32
Accrued Interest @ 9.75% as of August 1, 1999	\$	168,806.90
Escrow Payments due as of August 1, 1999	\$	31,781.97
Default Interest due as of August 1, 1999	\$	68,055.50
Late Fees as of August 1, 1999	\$	9,763.64
Interest On Advances as of August 1, 1999	\$	254.14
Attorney's Fees/Costs as of August 1, 1999	\$	1,994.49
Senior Unpaid Real Property Taxes	\$	33,903.72
Less: Funds Held in Suspense	<u>\$</u>	(22,697.96)
TOTAL:	\$ 2	2,611,936.72

Interest has accrued on this indebtedness from and after August 2, 1999 at the per diem rate of \$886.14 (at the default rate of interest) and \$628.35 (at the non-default rate of interest). Moreover, to the extent the lender is fully or oversecured, attorney's fees and costs will also be asserted.

In addition to the foregoing, there is a prepayment charge with respect to this loan, which would equal \$487,140.31 as of October 15, 1999, if this loan is paid off prior to its maturity.

The loan and security documents evidencing this loan are voluminous and have been filed as Exhibits #85, #86 and #87, inclusive in the <u>Appendix of Exhibits Filed by Secured Lender in Support of Various Pleadings</u> filed on August 3, 1999, all of which are incorporated by this reference herein.

Library: Phoenix; Document #: 79769v1

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM.
Name of Debtor	Case Number	
Leeward Hotels, L.P., an Arizona limited partnership	B-99-09162-PHX-GBN	
NOTE: Interforms hould not be used to make relaim for an administrative exper case. A -request hospayment of an administrative expense may be filed pursuant	10:11:0.5:029:503:3票等等等等。	
Name of Creditor (The person or other entity to whom the debtor owes money or	Check box if you are aware that	
property): LASALLE NATIONAL BANK, in its capacity as Trustee for the	anyone else has filed a proof of claim relating to your claim. Attach	
registered holders of DLJ Mortgage Acceptance Corporation, Commercial Mortgage Passthrough Certificates, Series 1997-CF1, by and through its	copy of statement giving	JAN 0 3 2000
Servicer, Lennar Partners, Inc. (the "Secured Lender")	particulars.	3 Zann
JET Fleet, Dennin : misnet, (Check box if you have never	~##
Name and address where notices should be sent:	received any notices from the	
Squire, Sanders & Dempsey L.L.P.	bankruptcy court in this case. Check box this address differs	
c/o Thomas Salerno, Esq.	from the address on the envelope	1
Two Renaissance Square 40 N. Central Avenue, Suite 2700	sent to you by the court.	İ
40 N. Central Avenue, Suite 2700 Phoenix, Arizona 85004-4498	, ,	Ļ
Telephone number: (602) 528-4000		
Account or other number by which creditor identifies debtor:	Check here	A
See Attachment A	if this claim replaces or amends a previ	iously filed claim, dated:
1. Basis for Claim:	Retiree benefits as defined in 11	
Goods sold	Wages, salaries, and compensation	
Services performed		
Money loaned	Your SS#:	
Personal injury/wrongful death	Unpaid compensation for services	s performed
Taxes		
Other	from(date)	to(date)
2. Date debt was incurred:	3. If court judgment, date obtained	d:
March 3, 1997	<u> </u>	
4. Total Amount of Claim at Time Case Filed:	\$ See Attachment A	
Check this box if claim includes interest or other charges in addition to the prin		statement of all
interest or additional charges.		
5. Secured Claim.	6. Unsecured Priority Claim.	
Check this box if your claim is secured by collateral (including a	Check this box if you have an unsecured	priority claim
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•	Amount entitled to priority: \$ Specify the priority of the claim:	
Brief description of Collateral: Motor Vehicle		
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Other	bankruptcy petition or cessation of the d § 507(a)(3)	ebtor's business, whichever is earlier - 11 U.S.C.
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Value of Collateral: \$currently unknown	Contributions to an employee benefit pla	ın - 11 U.S.C. § 507(a)(4)
	Up to \$1,950 of deposits toward purch	
	personal, family, or household use - 11	
	personal, family, or household use - 11	U.S.C. § 507(a)(6)
	personal, family, or household use - 11	U.S.C. § 507(a)(6)
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in .	personal, family, or household use - 11 Alimony, maintenance, or support owed § 507(a)(7)	to a spouse, former spouse, or child – 11 U.S.C. al units – 11 U.S.C. § 507(a)(8)
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ATTACHMENT A

Borrower Name: Plainview Holiday Hotel, L.P., as Guarantor

Account Numbers: 00-9791552/961093869, 00-9790812/961093795, 009791562/961093870, 00-9791549/961093868, 00-9791617/961093875, 00-9791604/961093874, 00-9791578/961093871, 00-9791581/961093872, 00-9791594/961093873, 00-9791536 / 961093867

Principal Balance as of August 1, 1999:	\$ 2	21,096,034.17
Accrued Interest @ 9.75% as of August 1, 1999	\$	1,534,931.93
Escrow Payments due as of August 1, 1999	\$	534,852.45
Default Interest due as of August 1, 1999	\$	618,816.91
Late Fees as of August 1, 1999	\$	89,932.57
Interest On Advances as of August 1, 1999	\$	2,647.77
Attorney's Fees/Costs as of August 1, 1999	\$	23,427.83
Senior Unpaid Real Property Taxes	\$	294,441.02
Less: Funds Held in Suspense	<u>\$</u>	(180,098.47)
TOTAL:	\$ 2	24,014,986.18

Interest has accrued on this indebtedness from and after August 2, 1999 at the per diem rate of \$8,057.50 (at the default rate of interest) and \$5,710.51 (at the non-default rate of interest). Moreover, to the extent the lender is fully or oversecured, attorney's fees and costs will also be asserted.

In addition to the foregoing, there is a prepayment charge with respect to this guaranty, which would equal \$4,431,890.15 as of October 15, 1999, if this indebtedness is paid off prior to its maturity.

The guaranty and security documents evidencing this guaranty are voluminous and have been filed as Exhibits #21, #22, #113 and #114, inclusive in the <u>Appendix of Exhibits Filed by Secured Lender in Support of Various Pleadings</u> filed on August 3, 1999, all of which are incorporated by this reference herein.

Library: Phoenix; Document #: 80943v1